

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 4, 2011
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto, Chair	Mr. William G. Klain
Honorable Eddward Ballinger	Honorable Kenneth Lee - <i>telephonic</i>
Honorable Michael J. Burke	Honorable David Mackey - <i>telephonic</i>
Honorable James Conlogue	Honorable Margaret Maxwell
Honorable Michael J. Cruikshank - <i>telephonic</i>	Honorable Colleen McNally
Honorable Robert Duber II	Honorable Patricia Noland
Honorable Sue Hall – <i>telephonic</i>	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen – <i>telephonic</i>	Honorable Michala Ruechel
Mr. Tim Hardy	Honorable Monica Stauffer
Honorable Charles V. Harrington - <i>telephonic</i>	Ms. Susan Wilson
Honorable Carey S. Hyatt	

MEMBERS ABSENT:

Honorable Stephen F. McCarville	Honorable Randall Warner
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PRESENTERS/GUESTS:

Mr. Jeff Schrade, AOC	Ms. Candy Wheeler-Ruby, Yuma County,
Ms. Jennifer Jones, AOC	Public Fiduciary
Ms. Amy Love, AOC	Ms. Doreen Borgmann, Arizona Court
Ms. Patience Huntwork, AOC	Reporters Association

STAFF:

Ms. Kay Radwanski, AOC	Ms. Tama Reily, AOC
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 4, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:06 a.m.

Judge Soto reviewed the remaining 2011 COSC meeting dates:

- Friday, May 20, 2011
- Friday, September 9, 2011
- Friday, November 4, 2011

B. Approval of Minutes

The draft minutes from the November 5, 2010, meeting of the COSC were presented for approval.

MOTION: To approve the September 10, 2010, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-11-015

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. COJET ACJA §§ 1-108 AND 1-302

Mr. Jeff Schrade, AOC Education Services Division (ESD) director, presented proposed revisions to ACJA § 1-108: Committee on Judicial Education and Training (COJET), which lays out the structure, purpose, and functions of COJET and its standing committees, and ACJA § 1-302: Education and Training, which defines education requirements and functions of the ESD. He gave a brief history of the code sections and the basis for the recommended changes. He then detailed the recommendations, which primarily simplify some administrative processes related to tracking and compliance, consolidate language redundancies, and standardize committee requirements. Mr. Schrade stated the proposed revisions have been reviewed by ESD staff, COJET and all of the COJET committees, in addition to the AOC Executive Office and Legal Services. The proposals are currently posted on the ACJA Forum, and Mr. Schrade encouraged members to add their comments and suggestions prior to the February 18, 2011, deadline. The final proposals will be presented at the AJC March 2011 meeting.

During discussion, Mr. Schrade took note of the suggestion that both rural and urban clerks of court be represented in the Court Leadership Institute of Arizona (CLIA). In addition, he affirmed that the portion of ACJA § 1-302 pertaining to probation officers and defensive tactics and firearms training will be amended in the final draft so it includes strictly probation officers and not support staff. Further, he verified the provision for attendance at training programs of regional or national scope every three years – not just for judges, but for court administrators and probation managers. To the question of funding for attendance at such trainings, he offered that discussions on the matter in several COJET committee meetings concluded that the requirement itself could aid many jurisdictions in justifying funding.

MOTION: To approve the proposed changes to ACJA §§ 1-108 and 1-302 as presented, with changes as discussed during the meeting. Motion seconded. Approved unanimously.
COSC-11-016

B. Priority of Offender Payments – GJ Workgroup Formation

Ms. Jennifer Jones, AOC court financial specialist in the Court Services Division (CSD), informed the committee of a workgroup being established to rewrite the General Jurisdiction Priority of Offender Payments code. She explained the revisions to the code are necessary because of factors such as automation changes. It is anticipated that the project will be completed in approximately one year. Monthly meetings will be held, mainly telephonically; however, workgroup members will occasionally need to attend meetings at the AOC. COSC members were encouraged to participate on the workgroup. An interest form was provided in the meeting materials along with information on where to send completed forms. Members can contact Ms. Jones at jjones2@courts.az.gov with any questions about the project.

C. Legislative Update

Ms. Amy Love, AOC legislative liaison, updated members on proposed legislation that could impact superior courts.

HB 2224: Court appointed fiduciaries

Prohibits the Supreme Court from requiring a licensed fiduciary to be an attorney. A fiduciary must document work done on an hourly basis and may not charge more than \$75 per hour.

HB 2232: Sentencing; criminal restitution order

Trial courts are given authority to order and enforce the manner in which court-ordered payments are made. The court shall file a criminal restitution order for the money when the defendant is sentenced, rather than after the defendant completes the sentence.

HB 2352: Court commissioner; qualifications

Changes the requirements a person has to meet in order to be appointed as a court commissioner. A person must be admitted to the practice of law in Arizona and have lived in Arizona for at least 5 years preceding the appointment.

HB 2444: Probate; wards; rights

Establishes various requirements for probate cases, including burden of proof, causes for sanctions, and requirements for fiduciary court appointees. Also creates a probate advocacy panel to review the activities of probate courts and develop training standards for probate judges, and requires each judge serving in county probate courts to demonstrate competence in all areas of probate jurisprudence.

SB 1129: Court commissioner; qualifications

Changes the minimum qualifications for serving as a Superior Court Commissioner to mirror that of a Superior Court Judge.

SB 1185: Court records; electronic access

Requires the Supreme Court to provide for electronic filing and access of court records and bulk data.

SB 1201: Firearms omnibus

Makes changes to what is commonly known as “Shannon’s Law.” A person is guilty of a class 6 felony only if the person ‘knowingly’ discharges a firearm, rather than if the person discharges a firearm “with criminal negligence.”

HB 2354: Grand jury proceedings; electronic recording

Permits the presiding judge of the Superior Court to use an electronic recording system to record proceedings before the grand jury in lieu of a court reporter.

HB 2355: Court surcharges

Surcharges will be applied to the base charge and not to any other surcharge.

HB 2364: Disciplinary actions; probations officers

Probation officers or surveillance officers employed by Arizona or a political subdivision of Arizona are added to the definition of “law enforcement officer” for the purposes of ARS § 38-1104.

HB 2404: Criminal restitution order; absconders

If the defendant absconds from probation or a sentence, the court shall enter into a criminal restitution order in favor of the state for the unpaid balance of fines, court, fees, surcharges and assessments.

HB 2444: Law enforcement officer discipline

During the interview of an officer, the employer may not require a law enforcement officer or probation officer to submit to a polygraph examination unless the polygraph examination is agreed upon by both the employer and the officer.

HB 2477: Law enforcement officers; witness; representation

Currently, if an officer or employer believes that an interview may result in the officer’s dismissal, demotion, or suspension, there are certain procedures pursuant to A.R.S. § 38-1101 that the agency must follow. This bill requires the agency apply those same procedures to witnesses.

HB 2486: Community supervision; parole; officers; ratios

A parole or community supervision officer cannot supervise more than an average of 65 adults on community supervision or parole.

SB 1023: Enforcement of pretrial release conditions

In counties with a population of more than two million persons, adult probation may serve warrants and make arrests of persons who are alleged to have violated a condition of pretrial release.

SB 1054: Waiver; intensive probation standards

Allows the Supreme Court to waive intensive probation caseload and supervision requirements for any county, rather than only counties with fewer than 300,000 persons, so long as probation officers do not supervise more than 15 probationers and the program requires at least one visual contact per week.

SB 1057: Law enforcement officers; disciplinary action

Once it is established that a law enforcement officer was subject to disciplinary action without just cause, the officer may recover all costs associated with any legal proceedings held to establish the officer's innocence.

SB 1081: Minors; protective proceedings

Repeals the existing A.R.S. § 14-5301, regarding appointment of a guardian for an unmarried child who the parent believes is an incapacitated person. Creates a new section, A.R.S. § 14-5301.01, governing the effective date and procedure for confirming the guardianship.

SB 1187: Dissolution of marriage; legal separation

Makes various changes to the required educational programs provided by each county's superior court regarding divorce.

SB 1188: Adoption; marital preference

Establishes relevant factors that must be considered when placing a child for adoption and requires the court to make specific written findings regarding the best interests of the child in every adoption proceeding.

SB 1191: Juveniles; discretionary transfer; adult court

Expands the "transfer back" provisions of A.R.S. § 13-504 to all offenses listed in A.R.S. § 13-501, subsection B, not just for Title 13, Chapter 14 (sex offenses) or Chapter 35.1 (sexual exploitation of children).

SB 1212: Civil appeals bonds; limits

Sets the bond that is necessary to stay execution during the course of all appeals or discretionary reviews of a civil judgment for damages as the lesser.

SB 1233: Peace officers at will employment

An *at will employee* (defined) in an executive or managerial position in a law enforcement agency is excluded from § 38-1104, the just cause statute.

SB 1283: Child custody; military families

Removes the requirement that a custodial parent who is a member of the U.S. armed forces file a military family care plan prior to any deployment. Requires the court to enter a temporary order modifying parental rights. The court is required to hear motions for modification as expeditiously as possible.

SB 1396: Domestic relations; support; community restitution

Requires the court to provide written notice to all parties in a custody proceeding of the right to have a written court analysis and conclusions of fact and law regarding child custody, community property/debt, and child support. If requested, the written analysis must include a detailed list of facts, case law, and statutes supporting the decisions. Ms. Love stated there have been a lot of concerns voiced on this proposal, and she requested that members review the bill and provide her with their feedback.

Ms. Love pointed out that information on numerous proposals on judiciary issues is included at the back of the packet. They included the following:

HCR 2020	SCR 1010	SCR 1042	SCR 1046
HCR 2026	SCR 1020	SCR 1043	SCR 1047
SB 1472	SCR 1040	SCR 1044	SCR 1048
SB 1481	SCR 1041	SCR 1045	SCR 1049
SB 1482			

Members can view all proposals on the [bills page](#) on the legislative website. Ms. Love asked that members' concerns on any of the proposals be outlined in an email to her at ALove@courts.az.gov.

D. New Rule Petitions

Ms. Patience Huntwork, staff attorney, Arizona Supreme Court, reviewed pending rule petitions that relate to superior court. The following were highlighted:

Civil Procedure Rules

R-10-0030

R-10-0034

R-10-0036

R-11-0008

R-11-0009

R-11-0010

R-11-0011

Rules of Criminal Procedure

R-10-0026

Rules of Evidence

R-10-0035

Rules of the Supreme Court

R-10-0031

R-10-0032

R-10-0001

R-11-0003

R-11-0012

Ms. Huntwork directed members' attention to *R-10-0035: Conforming Arizona Rules to Federal Rules of Evidence*, and suggested the committee might want to comment on this rule petition. Judge Soto advised that members can comment individually if they wish. All of the rule petitions can be reviewed on the [Court Rules](#) website. Members wishing to file comments on new rule petitions should visit the [Court Rules Forum](#).

III. OTHER BUSINESS

A. Next Meeting Date

Friday, May 20, 2011
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 345 A/B

B. Good of the Order/Call to the Public

Two members of the public addressed the committee.

Candy Wheeler-Ruby, a fiduciary with the Yuma County Public Fiduciary's Office, expressed concerns about the negative consequences of HB 2424, HB 2224, and SB 1499 for fiduciaries and their clients. She said she has spoken with fiduciaries in Yavapai, Coconino, and Mohave counties regarding these concerns, and they are in agreement. She also related that a conference of the Arizona Fiduciary Association is scheduled for February 18 in Tucson, and this issue is to be addressed then. Ms. Wheeler-Ruby stated she recently met with Judges Andrew Gould, John Paul Plant, and John Nelson regarding her concerns and was urged to come before COSC to express them, as well as to quote statutes that Judge Gould noted are in conflict with the proposed legislation.

Ms. Wheeler-Ruby went on to detail the effects of HB 2424, which would add a new section 14-5109 to existing statute. She also explained the ways in which HB 2224 and SB 1499 would negatively impact fiduciaries and their clients. Ms. Wheeler-Ruby stated that if these bills are passed, Yuma County alone would face increased staff costs of approximately \$300,000.

Judge Soto recommended Amy Love (ALove@courts.az.gov) and/or Jerry Landau (JLandau@courts.az.gov) be made aware of these concerns. He also suggested that following the February Arizona Fiduciary Association Conference, it would be useful to have a spokesperson for the organization address the legislature about all of their concerns.

Ms. Doreen Borgmann, President of the Arizona Court Reporters Association (ACRA), addressed the committee to report that ACRA continues to vigorously fight SB 1132 [*sic* – see SB 1156] and HB 2354, regarding grand jury electronic recordings. She stated that ACRA's lobbyist and several ACRA members met last week with Senator Linda Gray to relate their concerns about the legislation. Following that meeting, they were advised that Senator Gray withdrew her support of the bills and cancelled the Senate Judiciary Committee meeting, withdrawing the bills from this session.